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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/507,509	02/18/2000	Jay S. Walker	3553-4020US2	8064

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EXAMINER

RIMELL, SAMUEL G

ART UNIT

PAPER NUMBER

2175

DATE MAILED: 05/05/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/507,509

Applicant(s)

WALKER ET AL.

Examiner

Sam Rimell

Art Unit

2175

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 98-111 and 138-147 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 98, 100-104, 106, 108, 110, 111, 138-144, 146 and 147 is/are rejected.
- 7) ☒ Claim(s) 99, 105, 107, 109, 145 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**


- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

  
SAM RIMELL  
PRIMARY EXAMINER

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 98, 100-104, 106, 108, 110-111, 138-144 and 146-147 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spallone et al. ('686) in view of Bezos ('399).

Spallone et al. discloses a shopping order system having a server (200) which includes a storage device for storing programs (col. 3 lines 62-65). Processors (220, 230) are connected to the server (220) via a communications network. The processors (220,230) receive conditional purchase offers from customers (FIGS 3B-3F). The purchase offers are compared with seller inventory (FIG. 5). As seen in the far right column in FIG. 5 a determination is made as to whether the conditional purchase for the particular item is acceptable or unacceptable. If the purchase is unacceptable (by reason that the item is out of stock) then the rejection is formulated and transmitted to the user (col. 7, lines 6-8). The notation within the inventory database (FIG.5) that the item is out of stock prevents the customer from any orders on that particular item.

The prices for the items in FIG. 5 are the seller defined rules.

The customer uses a series of web pages (FIGS 3A-3G) and which define a web browser.

Spallone et al. differs from the claims in that it does not disclose the receipt of payment identifiers from the customer.

However, Bezos teaches a system that can be used in an environment where a merchant receives an order from a customer. In addition to the order, the customer can provide a payment identifier (lines 12-15 of abstract) that links the merchant to a customer credit card or debit card

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(col. 3, lines 7-10).

It would have been obvious to one of ordinary skill in the art to modify Spallone et al. to include the transmission of a payment identifier to the merchant to assist in the secure payment of the items being ordered, as taught by Bezos.

Using the system of Spallone et al. to order airline tickets, computer equipment, hotel reservations or other forms of merchandise would have been obvious to one of ordinary skill in the art as a choice of design.

Claims 99, 105, 107, 109 and 145 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Remarks

Applicant's arguments have been considered but are not well taken. In particular, applicant argues that the reference to Spallone et al. teaches the presentation of an order from a customer, but not an offer.

Examiner has considered applicant's arguments to this point, but maintains that the actions being taken by the customer in FIGS. 3B-3G are readable as "offers".

In the last two lines of page 1 of Applicant's Response to the Office Action, applicant defines the term "offer" by stating:

*"A user placing an offer for a product or service where acceptance by a seller is not guaranteed---is simply not an order."*

In the first paragraph of the second page, applicant states:

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*"In stark contrast thereto, when a user makes an offer on Priceline, the user must first wait to hear if that offer has been accepted by (or on behalf of) a seller, before there can be any certainty that any goods or services have been purchased by the user".*

By these two statements, applicant is defining the term "offer" as simply being an "order" which can be declined by the seller.

This is exactly what occurs in Spallone et al. As seen in FIG. 5, the processing system has to check with a database to determine if an item is in stock before the request from the customer is accepted. If an item is not in stock, the seller can indicate such to the customer, and the order cannot be placed.

Since the acceptance by the seller is not guaranteed, and the user must wait for an acceptance, the request from the customer is an "offer" by applicant's own definition.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (703) 306-5626.



Sam Rimell  
Primary Examiner  
Art Unit 2166